

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

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**In the Matter of**

**Revision of the Commission’s Rules To  
Ensure Compatibility With Enhanced 911  
(E911) Emergency Calling Systems**

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**CC Docket 94-102**

To: Wireless Telecommunications Bureau

**REQUEST FOR A LIMITED WAIVER AND EXTENSION  
OF THE COMMISSION’S PHASE II E911 RULES**

Alaska DigiTel, LLC (“Digitel”), pursuant to 47 C.F.R. § 1.925, hereby requests a limited waiver and extension of certain of the Phase I and Phase II enhanced 911 (E911) requirements set forth in 47 C.F.R. § 20.18.<sup>1</sup>

As set forth below, based on the unique and unusual circumstances, strict application of the Phase I and II E911 rules would be inequitable and unduly burdensome to Digitel, and would frustrate the very purpose of the rule. Further, grant of the limited waiver and extension request would serve the public interest.

## **Background**

Digitel appreciates the public safety importance of Phase II E911 service. It provides digital wireless service in rural Alaska; specifically serving Anchorage, Juneau, Fairbanks, Mat Su Valley, and Kenai Peninsula. It operates a CDMA network, serving approximately 16,000 subscribers. It also operates a roam-only GSM network in a portion of Anchorage.

## **Relief Sought**

Digitel received a combined Phase I and Phase II request from the Anchorage, Alaska PSAP on May 15, 2003. Subsequently, through representatives of the city, Digitel was advised that (a) the city was not prepared to utilize wireless E911, as the city had not yet contracted for services required for the utilization of E-911; and (b) once the city becomes enabled to process E911 calls, it will issue a revised notice which will re-start the six-month clock for providing service.

In view of the above, and out of an abundance of caution, Digitel seeks a waiver and extension until June 30, 2005 of the Phase I rules, which requires Digitel to be capable of providing cell site or base station location information to the Public Safety Answering Point ("PSAP") within six months of a PSAP request. 47 C.F.R. 20.18(d)(1). Digitel also seeks a waiver and an extension until June 30, 2005 of the Phase II E911 rules requiring them to commence selling and activating location capable handsets no later than September 1, 2003; and

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<sup>1</sup> A waiver of the Commission's rules applicable to public mobile services is appropriate when ever a party demonstrates either (1) that the underlying purpose of the rule would not be served or would be frustrated by its application to the instant case, and that grant of a waiver would be in the public interest, or (2) in view of unique or unusual factual circumstances to the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative. 47 C.F.R. § 1.948.

to install any hardware and/or software in its network to enable the provision of Phase II E911 service and deliver it to the PSAP. 47 C.F.R. § 20.18(g)(1)(i) & (g)(2).

### **Discussion**

As a general matter, a waiver is appropriate when special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>4</sup> The Commission has established standards to be used when acting upon requests for a waiver of E911 deadlines and obligations.<sup>5</sup> The Commission has held that it will grant waiver requests that are specific, focused, and limited in scope, with a clear path to full compliance.<sup>6</sup> Further, the Commission has stated that carriers should undertake concrete steps necessary to come as close as possible to full compliance and should document their efforts aimed at compliance in support of any waiver request.<sup>7</sup> As set forth below, Digitel meets the Commission's standards and that the circumstances underlying the request, in sum, present a special case that justifies a limited E911 Phase II waiver and extension.

The circumstances surrounding Digitel's waiver and extension request are "unique and unusual." Digitel operates in Alaska, which is unquestionably one of the most rural markets in the United States. Further, it is a small carrier with limited financial resources. Hence, it does not have access to the same financial markets available to the larger carriers. (That the Commission should consider Digitel's financial status in ruling on this waiver request is axiomatic.) Lastly, although the prior PSAP letter has not yet been formally retracted, the city's

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<sup>2</sup> See HCI's E911 Phase II Report on file with the Commission.

<sup>3</sup> Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Third Report and Order*, 14 FCC Rcd 17,388, 17,390-91 (1999).

<sup>4</sup> 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D. C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D. C. Cir. 1969)).

<sup>5</sup> *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, 17457-58, paras. 43-44 (2000) (*E911 Fourth Memorandum Opinion and Order*).

consultant responsible for utilization of E911 services has communicated to Digitel that the notice will be retracted; has explained why; and has indicated when it may be re-issued.

At this time, there is no public interest benefit that would result from Digitel expending resources on E911. After all, the city's E911 representative has explained that such information cannot be utilized. That is why the prior request is being retracted. In addition, Digitel is not in a financial position to undertake the installation of a Phase II E911 network based technology. Although Digitel's CDMA network is Phase I capable, based upon price quotes already received from a vendor, the connectivity costs associated with delivering Phase I service to the PSAPs will be substantial. In order to become Phase II capable utilizing a handset-based technology, Digitel must make several upgrades to its CDMA network, including both software and hardware upgrades. It currently is negotiating with several vendors regarding the necessary upgrades. (See attached Exhibit I which provides Digitel's estimated costs associated with Phase I and Phase II E911 compliance. Because Exhibit I contains sensitive pricing information, Digitel has submitted Exhibit I separately pursuant to a request for confidentiality). Hence, requiring Digitel to strictly comply with the Phase II E911 rules would result in a severe financial strain and jeopardize them as an on-going concern.

Digitel also submits that it is premature for it to commit to a definitive E911 solution, for several reasons. First, the various E911 technologies have not been fully deployed, or performance fully evaluated in urban areas. It is most likely that there will be significant technology advances in the next year that are based on results in dense urban areas. Second, Digitel is concerned that a current commitment to a certain E911 solution will require further upgrades should a better solution surface within the next two years. Thus, expending any money

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<sup>6</sup> *E911 Fourth Memorandum Opinion and Order*, 15 FCC Rcd at 17458, para. 44.

<sup>7</sup> *Id.*

now would be most wasteful. Finally, because there are a finite number of vendors, most of which are servicing the more urban areas, it will be virtually impossible for a small carrier such as Digitel to get their attention and put their products through appropriate testing and deployment.

Requiring Digitel to expend monies for both Phase I and Phase II compliance at this time would place them at a severe disadvantage with its competitors. Specifically, it is anticipated that Digitel's competitors will transition to an alternative technology (either GSM or CDMA). If such competitors are ultimately exempt from E911 compliance on their legacy network, then Digitel would be penalized for being the most recent market entrant who happened to select a state of the art technology.

Nonetheless, at this time, Digitel is in the process of undertaking the following steps toward compliance: (1) negotiating with vendors regarding connectivity associated with delivering Phase I service to the PSAPs; (2) negotiating with vendors regarding software and hardware upgrades to become Phase II compliant; (3) determining which handsets will be best suited for its subscribers. Digitel believes it is premature to enter into any agreements with handset vendors as it must first complete the necessary upgrades to its CDMA network; and (4) identify a deployment plan.

Therefore, because of the severe financial burden to implement both Phase I and Phase II E911 service at this time, and the city's determination to retract its initial request and to reissue a revised one next spring, Digitel seeks an extension until June 30, 2005 with respect to both the Phase I and Phase II rules.

**Conclusion**

Based on the foregoing reasons, grant of a limited waiver of the Commission's Phase II E911 rules will serve the public interest.

Respectfully submitted,

ALASKA DIGITEL, LLC

Lukas, Nace, Gutierrez & Sachs, Chartered  
1111 19<sup>th</sup> Street, NW, Suite 1200  
Washington, DC 20036  
202/857-3500

\_\_\_\_\_/s/\_\_\_\_\_  
Thomas Gutierrez  
Todd Slamowitz  
Its Attorneys

August 29, 2003

**DECLARATION OF STEPHEN M. ROBERTS**

I, Stephen M. Roberts, declare under penalty of perjury that the foregoing is true and correct.

1. I am the Managing Director and Corporate Secretary of Alaska DigiTel, LLC.
2. I am familiar with the facts contained in the foregoing "Request for Limited Waiver and Extension of the Commission's Phase II E911 Rules", and I verify that those facts are true and correct to the best of my knowledge and belief, except that I do not and need not attest to those facts which are subject to official notice by the Commission.

\_\_\_\_\_/s/\_\_\_\_\_  
Stephen M. Roberts  
August 29, 2003